

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMISTRATIVE LAW JUDGES**

In the Matter of)	
)	
Altria Group, Inc.,)	
a corporation,)	Docket No. 9393
)	
and)	
)	
JUUL Labs, Inc.)	
a corporation,)	
)	
Respondents.)	
)	

**DECLARATION OF CARRIE FREED IN SUPPORT OF NON-PARTY PHILIP MORRIS
INTERNATIONAL INC.'S MOTION FOR *IN CAMERA* TREATMENT**

I, Carrie Freed, hereby declare as follows:

1. I am an Assistant General Counsel for non-party PMI Global Services Inc. ("PMI Global Services"), an affiliate of non-party Philip Morris International Inc. ("PMI"), and I submit this declaration in support PMI's Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I am familiar with the documents and testimony that PMI produced in the above-captioned matter in response to the subpoenas from the Federal Trade Commission ("FTC") and respondent Altria Group, Inc. ("Altria"), including the documents that are the subject of the Motion (the "Confidential Documents"). Given my position at PMI Global Services and my knowledge of PMI's business, I am personally familiar with the contents of the

documents identified in the Motion and Memorandum of Law in Support of the Motion, the level of confidentiality associated with the information contained therein, and the competitive significance of this information to PMI. Based on my review of the documents and my knowledge of PMI's business, I submit that the disclosure of the Confidential Documents to the public, PMI's competitors, and PMI's potential business partners would cause serious injury to PMI.

3. PMI is an international tobacco company engaged in the manufacture and sale of cigarettes, as well as non-combusted tobacco products, associated electronic devices and accessories, and other nicotine-containing products. As of 2016, PMI made a public statement that it had shifted its focus and purpose "to deliver a smoke-free future by focusing its resources on developing, scientifically substantiating and responsibly commercializing smoke-free products that are less harmful than smoking, with the aim of completely replacing cigarettes as soon as possible."⁵
4. In September 2019, Altria's subsidiary, Philip Morris USA Inc. ("PM USA"), began commercializing PMI's innovative tobacco heating device, IQOS, and associated consumables (HeatSticks), under a license in the US IQOS heats, but does not burn, tobacco. PMI's IQOS device and its consumables have received marketing authorization from the US Food and Drug Administration ("FDA") under the premarket tobacco product application ("PMTA") pathway. The FDA has also authorized the marketing of a version of PMI's IQOS device and its consumables as a Modified Risk Tobacco Product ("MRTP"), finding that an exposure modification order for these products is appropriate to promote

⁵ See PMI's Statement of Purpose, Excerpt from 2020 Proxy Statement, *available at* <https://www.pmi.com/statement-of-purpose>.

the public health. IQOS is the first product of its kind to receive these FDA authorizations.

Other than the commercialization of its IQOS devices and consumables through the license with Altria, PMI does not currently have any other products commercialized in the US.

5. In addition to the licensing agreement for the commercialization of IQOS, PMI previously entered into other agreements with Altria, including an agreement to jointly research and develop certain types of e-vapor products also known as electronic cigarettes.
6. As of 2020, PMI began the international commercialization of the latest version of its electronic cigarette, which is marketed under the brand-name IQOS VEEV. IQOS VEEV uses a proprietary technology known as MESH to heat pre-filled pods containing nicotine. While currently commercialized in select international markets, as part of its aim to deliver a smoke-free future, PMI intends to expand its commercialization efforts, including at some point in the future seeking the necessary US FDA authorizations to commercialize IQOS VEEV in the US.
7. Given PMI's focus on smoke-free tobacco and nicotine-containing products, information pertaining to PMI's smoke-free product development and commercialization is critically important to PMI. Because other firms compete with respect to these or similar products, both internationally and in the US, PMI's strategic documents pertaining to PMI's smoke-free products are highly commercially sensitive. Given the time it takes to research, develop, determine a plan for distribution, and receive authorization to commercialize these products, PMI's confidential documents regarding its smoke-free products and the industry will remain sensitive for several years.
8. PMI takes significant measures to ensure the secrecy of its confidential information. PMI's document security policies, which govern the Confidential Materials, include, but are not

limited to, policies regarding user access to PMI's network; computer passwords; physical controls; and network security. With the exception of two categories of documents exchanged with Altria as discussed below, PMI has taken and continues to take steps to limit the commercially sensitive information in the Confidential Documents to PMI senior management and select employees. As to the Confidential Documents exchanged between PMI and Altria, those materials were shared (1) in furtherance of a contemplated merger between the parties, in which the parties executed a non-disclosure agreement, or (2) as part of, or due to, business relationships between Altria and PMI, including PMI's and Altria's agreements concerning IQOS and the research and development of electronic cigarettes. PMI exchanged this information with Altria on the understanding and belief that the information would remain confidential within the two companies. In addition, both companies took steps to ensure the confidentiality of any shared Documents by limiting access to these Documents, including the use of secure sharing platforms, which allowed each company to restrict access to a limited set of employees. To the best of my knowledge, the information contained in the documents, therefore, was not broadly known throughout each of PMI and Altria, let alone to the public.

9. Based on my review, the Confidential Documents that PMI is seeking *in camera* treatment for fall into three categories: (1) documents regarding a contemplated PMI-Altria merger; (2) documents exchanged between PMI and Altria pursuant to their business relationships and internal documents related to that relationship; and (3) product development and commercialization plans. All of these documents contain sensitive and material business information and trade secrets, the competitive significance of which is unlikely to decrease for many years, for the reasons discussed in more detail below.

A. Category 1 – The contemplated PMI-Altria merger

10. The materials identified in Category 1 consist of internal and confidential documents related to a contemplated merger between PMI and Altria in September 2019. These documents are:

Exhibit No.	Beg Bates	End Bates
PX3011	PMI-FTC-000000112	PMI-FTC-000000112
PX3012	PMI-FTC-000000113	PMI-FTC-000000113
PX3030	PMI-FTC-000000555	PMI-FTC-000000555
PX3034	PMI-FTC-000000586	PMI-FTC-000000601
PX3036	PMI-FTC-000000675	PMI-FTC-000000696
PX3039	PMI-FTC-000001085	PMI-FTC-000001091
PX3041	PMI-FTC-000001113	PMI-FTC-000001180
PX3042	PMI-FTC-000001183	PMI-FTC-000001236
PX3053	PMI-FTC-000001611	PMI-FTC-000001622
PX3054	PMI-FTC-000001652	PMI-FTC-000001726
PX3055	PMI-FTC-000001742	PMI-FTC-000001893
PX3081	PMI-FTC-000034453	PMI-FTC-000034547
PX3084	PMI-FTC-000034584	PMI-FTC-000034584
PX3085	PMI-FTC-000034585	PMI-FTC-000034667
PX3086	PMI-FTC-000034699	PMI-FTC-000034774
PX3087	PMI-FTC-000035006	PMI-FTC-000035097
PX3089	PMI-FTC-000035244	PMI-FTC-000035248
	PMI-FTC-000035250	PMI-FTC-000035273
	PMI-FTC-000035275	PMI-FTC-000035282
	PMI-FTC-000035284	PMI-FTC-000035299
	PMI-FTC-000035301	PMI-FTC-000035305
PX3107	PMI-FTC-000036942	PMI-FTC-000036980
PX3108	PMI-FTC-000036777	PMI-FTC-000036777
PX3109	PMI-FTC-000036982	PMI-FTC-000036982

11. The Category 1 documents contain or reference the terms of the draft merger agreement, PMI's internal analyses of the transaction, and PMI's bargaining position. These documents also provide insight into how PMI analyzes potential transactions, how it values varying business segments, the factors PMI considers when examining a potential transaction, and PMI's strategic analysis of the US and international markets for smoke-free products. The documents also show PMI's business strategy and approach to the marketplace. Public

disclosure of this information would unfairly advantage PMI's competitors by revealing PMI's strengths, weaknesses, and competitive insights. Moreover, the documents could unfairly harm PMI in any future negotiations with business partners or parties with which PMI is seeking to engage in a business relationship, including potential mergers and acquisitions.

B. Category 2 – PMI-Altria business relationship

12. PMI and Altria have entered into various agreements with each other, including agreements related to Altria's commercializing PMI's IQOS device and associated HeatStick consumables in the US, and the research and development of electronic cigarettes.

13. PMI's documents in Category 2 consist of business correspondence and other documents that PMI and Altria exchanged concerning these agreements. This category also includes PMI's internal analyses of the PMI-Altria relationship. The Documents in the following table are in Category 2:

Exhibit No.	Beg Bates	End Bates
PX3043	PMI-FTC-000001435	PMI-FTC-000001435
PX3044	PMI-FTC-000001436	PMI-FTC-000001437
PX3045	PMI-FTC-000001438	PMI-FTC-000001439
PX3046	PMI-FTC-000001440	PMI-FTC-000001440
PX3047	PMI-FTC-000001441	PMI-FTC-000001442
PX3048	PMI-FTC-000001443	PMI-FTC-000001443
PX3049	PMI-FTC-000001444	PMI-FTC-000001445
PX3073	PMI-FTC-000002093	PMI-FTC-000002094
PX3074	PMI-FTC-000002099	PMI-FTC-000002099
PX3093	PMI-FTC-000035483	PMI-FTC-000035501
PX3094	PMI-FTC-000035503	PMI-FTC-000035519
PX3098/RX1057	PMI-FTC-000035623	PMI-FTC-000035633
PX3100	PMI-FTC-000035727	PMI-FTC-000036014
PX3100/RX1021	PMI-FTC-000035688	PMI-FTC-000035726
PX3101	PMI-FTC-000036016	PMI-FTC-000036018
PX3106	PMI-FTC-000064646	PMI-FTC-000064648
PX3111/RX1036	PMI-FTC-000069733	PMI-FTC-000069735
PX3112/RX1049	PMI-FTC-000099170	PMI-FTC-000099171
PX3210	PMI-FTC-000099172	PMI-FTC-000099173

Exhibit No.	Beg Bates	End Bates
PX3221	PMI-FTC-000070007	PMI-FTC-000070012
RX1764	PMI-FTC-000070548	PMI-FTC-000070549

14. The documents in Category 2 reveal confidential information about the terms and status of PMI's and Altria's commercial relationship. The terms of PMI's and Altria's relationship are competitively significant for PMI's business strategies, performance, and ongoing operations. If made public, these documents would permit PMI's competitors to learn its strengths and weaknesses and to use this information to unfairly disrupt PMI's business strategy. These documents also contain PMI's analyses of various aspects of this relationship. The information contained in this category of documents would inform other industry players of the types of terms and arrangements PMI may be willing to enter into, therefore unfairly disadvantaging PMI in any potential future negotiations with customers, distributors, or other business partners.

15. To the best of my knowledge, the competitively-sensitive information in these documents is not known to competitors or the general public and remains confidential within PMI and Altria.

C. Category 3 – Product Development and Commercialization

16. The documents in Category 3 are listed in the table below and include documents related to the design and marketing proposals of PMI's products, including PMI's smoke-free products. They contain highly confidential information regarding PMI's strategies for its smoke-free products, the development and commercialization status of new products, and plans on how and where PMI might commercialize its new smoke-free products.

Exhibit No.	Beg Bates	End Bates
PX3009	PMI-FTC-000000001	PMI-FTC-000000039
PX3013	PMI-FTC-000000139	PMI-FTC-000000139

Exhibit No.	Beg Bates	End Bates
PX3027	PMI-FTC-000000334	PMI-FTC-000000427
PX3050	PMI-FTC-000001446	PMI-FTC-000001507
PX3052	PMI-FTC-000001572	PMI-FTC-000001579
PX3078	PMI-FTC-000034183	PMI-FTC-000034192
PX3079 [As Partially Redacted]	PMI-FTC-000034260	PMI-FTC-000034278
PX3088	PMI-FTC-000035098	PMI-FTC-000035121
PX3090/RX1020	PMI-FTC-000035369	PMI-FTC-000035388
PX3091	PMI-FTC-000035389	PMI-FTC-000035418
PX3092	PMI-FTC-000035423	PMI-FTC-000035481
PX3099	PMI-FTC-000035654	PMI-FTC-000035670
PX3102 [As Partially Redacted]	PMI-FTC-000036023	PMI-FTC-000036028
RX1016	PMI-FTC-000000221	PMI-FTC-000000332
RX1029	PMI-FTC-000063174	PMI-FTC-000063191
RX1035 [As Partially Redacted]	PMI-FTC-000039906	PMI-FTC-000039911
RX1762	PMI-FTC-000067671	PMI-FTC-000067716

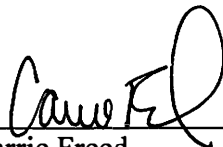
17. PMI's product development and commercialization plans are important aspects of competition in the smoke-free tobacco and nicotine product segments. Disclosure of PMI's competitive strategy would undermine and otherwise injure PMI's ability to compete.

D. Martin King Deposition Transcript

18. The litigants in this matter have also proposed to introduce the deposition transcript of Martin King, the Chief Executive Officer of PMI America (RX0111 and PX7020). In his deposition, Mr. King discussed strategic issues; PMI's non-public commercialization plans and projections; analyses of the smoke-free tobacco and nicotine product segments, including PMI and competitors' strengths and weaknesses; insights into PMI's business relationships; the confidential terms of their business arrangements and potential future relationships; and other discussions related to PMI's plans and efforts to compete in the smoke-free tobacco and nicotine product segments. For the reasons discussed above, PMI

requests that certain portions of the transcript also receive *in camera* treatment. Attachment A shows the portions of Mr. King's transcript for which PMI seeks *in camera* treatment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 7, 2021.



Carrie Freed